

6 SEP 1979

MEMORANDUM FOR: Assistant General Counsel

FROM: Edward L. Sherman  
Director of Finance

SUBJECT: Draft of Title IV, Charter Legislation, Transmitted  
with OGC 79-07659, dtd 20 August 1979

We have the following comments for your consideration:

a. Page 8, Section 414:

Does one of the subsections of this section provide the authority needed for the Agency to make accommodation procurements for foreign governments, foreign entities and foreign individuals; if so will its inclusion in the Charter Legislation when enacted supersede possibly conflicting provisions of the Hughes-Ryan Amendment of the Foreign Assistance Act of 1961?

b. Page 11, Section 421(a)(2):

The proposed changes in this section appears to have inadvertently eliminated provision for reimbursement to the Agency for personnel detailed to other agencies. We have the following corrective suggestions in priority order of preference in terms of least change in the format of Part C.

(1) Reword subsection (2) to read as follows:

"Arrange with other departments and agencies for the detail or assignment of personnel to or from the Agency." (Authority for "reimbursements to and from" is provided by section 421(b) and probably also by section 421(a)(1).)

(2) Omit subsection (2) entirely. (Section 421(c) authorizes details to and from other agencies and section 421(a)(1) presumably could be used as authority for reimbursements to and from; if not, the order of sections 421(b) and (c)

could be reversed and the new 421(c) could read as follows: "Any department or agency may transfer to or receive from the Agency any sum of money in accordance with subsections (a)(1) and (b) of this section.)"

c. Page 21 & 22, Section 423:

- (1) We are aware of the general background leading to the inclusion of this section in the charter legislation. It is not clear, however, why subsection (f) on the meaning of the term "proprietary" is now proposed for deletion without explanation or comment; in our view the inclusion of a definition is probably desirable to avoid possible future questions about the intended coverage of this section.
- (2) We believe there is potential for conflict between the provision in subsection (b) that funds not required by a proprietary for operational purposes shall be deposited in miscellaneous receipts of the Treasury and the provision in subsection (c) that proceeds from liquidation, sale or other disposition of a proprietary may be used to establish and operate other proprietaries in furtherance of the same or closely related objectives.

d. Page 29, Section 431(b)(1):

The proposed deletion clearly deprives the Director of authority that would otherwise be available for developing regulations for domestic travel of Agency personnel. The significance of this point may be dependent upon the latitude that would be afforded by the word "comparable" to prescribe domestic travel regulations granting entitlements different in any degree than those provided for in Chapters 57 and 59 of Title 5, United States Code. The language deleted clearly would have provided an authority which might have been useful -- whether a rationale can be developed for making its retention an issue is the question.

e. Page 30, Section 431(d):

- (1) This section appears to provide authority under regulations issued by the Director of the Agency, for the Agency to:
  - (a) Pay expenses, allowances, benefits and gratuities similar to those authorized in subsections (b) and (c) when the Director determines that such expenses, allowances, benefits or gratuities are necessary for the performance of authorized functions or for reasons of operational necessity or security when the means of paying expenses, allowances, benefits, gratuities authorized in subsections (b) and (c) should not be utilized and

(b) Pay special expenses, allowances, benefits and gratuities when necessary to sustain particular Agency activities.

(2) Inasmuch as subsections 431(b) and (c) to which reference is made make no provision for the "means of payment", it is suggested that subsection (d) be revised to read as follows:

"Notwithstanding the provisions of subsections (b) and (c) and under regulations issued by the Director of the Agency, the Agency (1) may pay expenses, allowances, benefits, and gratuities similar to those specifically authorized in those subsections in any case in which the Director of the Agency determines that such expenses, allowances, benefits or gratuities are necessary for the effective performance of authorized functions or for reasons of operational necessity or security, and (2) may pay special expenses, allowances, benefits, and gratuities when necessary to sustain particular Agency activities."

[Redacted Signature Box]

Edward L. Sherman

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Approved For Release 2003/03/06 : CIA-RDP86-00101R000100070004-3

20 July 1979

MEMORANDUM FOR: Assistant General Counsel

FROM: Edward L. Sherman  
Director of Finance

SUBJECT: Recent Draft of Title IV, Charter Legislation

REFERENCE: Memo for Asst. General Counsel fm Dir/Finance,  
dtd. 31 Jan 1979, Subj: Revised Title IV  
Proposed Charter File

We were pleased to note in our review of the current draft of Title IV that most of the concerns expressed in Reference have been cured. We have only two remaining comments.

a. Page 29 Section 412(b)(3):

Inasmuch as the statutory reference cited in the draft language provides a different authority for dependents of the Department of State than for dependents of the employees of other Agencies, it is suggested that this sub-section be expanded to read as follows, (the new language is underscored):

"(3) educational travel benefits for dependents in the same manner and under the same circumstances as such benefits are provided under 5 U.S.C. 5924 (4)(B) for dependents of an employee of the Department of State."

b. Page 30 Section 412(d):

This section appears to provide authority for payment of certain expenses and benefits and allowances for reasons of operational necessity or security in any case in which the means (emphasis added) of paying such expenses authorized in specifically cited previous sections should not be utilized. The intent is not clear because those previous sections so cited (sections 412(b) and 412(c)) make no provision as to the "means" of payment.

In the interests of clarification it is suggested that the following language be substituted for the last six lines of the present wording of this section:

"effective performance of authorized functions, or for reasons of operational necessity or security may pay special allowances and travel expenses when necessary to sustain particular Agency activities."

[Redacted Signature]

*ES* Edward L. Sherman

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(20 July 1979)

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31 JAN 1979

REFERENCE

MEMORANDUM FOR: Assistant General Counsel

FROM: Edward L. Sherman  
Director of Finance

SUBJECT: Revised Title IV Proposed Charter File

REFERENCE: Multi Adse Memo fr. General Counsel, dtd 16 Jan 1979,  
same subject (OCG 9-00480)

This memorandum provides comments on various sections of the draft attached to reference.

a. Page 5 Section 412(a):

In the context of the final sentence of this section, would the word "serve" better express the purpose than "act".

b. Pages 10 and 13 Sections 421(a)(1) and 421(b):

Inasmuch as there appears to be some redundancy in the purpose of these sections, it is suggested they be merged into a single section in the interests of clarity.

c. Page 11 Section 421(a)(10):

Do we correctly assume this paragraph will have the effect of superseding the Economy Act? If so, does the language authorize such transfers independently of the provisions of section 421(a)(1) and does it also have the effect of authorizing amounts so transfer<sup>ed</sup> to be expended without regard to any limitation on the appropriations from which transerred. If it is the purpose of this language to supersede the provisions of the Economy Act, we believe it should be clear beyond question that the tranfers authorized may be accomplished without an OMB approval requirement, consistent with the methodology currently available for Economy Act transfers.

d. Page 13 Section 421(a)(17):

If the suggested language is intended to authorize reimbursement for dues for membership in professional associations, it is believed additional language to that end would be desirable.

e. Page 15 Section 421(h):

It is suggested that the listing of the officials explicitly identified as eligible for protection should include the Deputy Director of the Central Intelligence Agency.

f. Page Section 421(i):

Is the language of this section limiting compensation so specific as to preclude an Agency option to pay bonuses should the Agency eventually desire to adopt comparable provisions of the recent Civil Service Reform Act?

g. Page 27 Section 426(c)(3):

We are not clear as to the purpose of the requirement in this section to the effect that expenditures and financial obligations be approved by the Director of the Agency and the Director of OMB. In our view it seems redundant of the preceding paragraphs of Section 426(c). A literal interpretation of the language based on the technical meaning of financial "obligation" and "expenditure" would require each individual transaction representing a binding agreement ("obligation") for payment of funds or payment ("expenditure") in liquidation of an obligation to receive the prior approval of the Director of the Agency and the Director, OMB. We suggest deletion of this section.

h. Page 33 Section 441(a) (b) (c):

(1) The definition of employees eligible for death gratuities is more restrictive than was reflected in the recent Agency legislative proposal for the same purpose being drafted for submission to OMB.

(2) The deleted language in the last line on page 33 should also have included the word "allowances."

i. Page 35 Section 441(d):

This section appears to provide authority for payment of certain expenses and benefits and allowances for reasons of operational necessity or security in any case in which the



means (emphasis added) of paying such expenses authorized in specifically cited previous sections should not be utilized. The intent is not clear because those previous sections so cited (sections 441(b) and 441(c)) make no provision as to the "means" of payment.



Edward L. Sherman

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(31 Jan 79)

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19 October 1978

DD/A Registry

78-399111

MEMORANDUM FOR : Special Support Assistant to the DDA

FROM :   
Assistant General Counsel

SUBJECT : S.2525 - Proposed Intelligence Charter  
Legislation - Title IV, CIA - Health  
Care Authority in Section 421(a)(13)

REFERENCE : Your Note to AI/DDA, 16 October 1978

1. As a result of your recent comments concerning Section 421(a)(13) (now (11)) which would provide CIA authority to "conduct health-service programs as authorized by Section 7901 of Title 5," I have reviewed 5 U.S.C. 7901, 22 U.S.C. 1156-59, and the proposal of the Interagency Committee on Overseas Allowances and Benefits ("ICOAB") for U.S. employees to add a new Section 7904 to Title 5. That review leads me to conclude that the reference to 5 U.S.C. 7901 should not be deleted, but that an additional reference to 22 U.S.C. 1156-59 should be added to Section 421(a)(13).

2. Section 7901 of Title 5 (copy attached) is part of the general provisions of the United States Code which govern "Government Organization and Employees." It provides general authority for federal agencies to establish and maintain health service programs for their employees. It is not limited by geographical restraints in any way and certainly not, as your note indicates, to areas outside the U.S. since, if that were true, the reference in (f)(1) to the TVA would be nonsensical. Thus, it would appear to be appropriate to retain the reference to this provision.

3. Sections 1156-1159 of Title 22 furnish authority for medical services supplied to foreign service employees of the Department of State, and are also utilized by this Agency in support of its medical program abroad. These provisions authorize paying medical expenses for illness or injury abroad, paying travel expenses for treatment of such illness or injury, establishing first-aid stations and employing medical personnel abroad, providing pre-employment and pre-assignment physical examinations and inoculations for applicants, employees and dependents to be sent abroad, and post-separation medical services. Clearly, the focus

of these provisions is areas outside the U.S. and they provide specific authorities which supplement 5 U.S.C. 7901 and would be usefully cited in the CIA charter provision as well.

4. The purpose of the ICOAB proposal to add a new Section 7904 to Title V, as stated in the ICOAB draft transmittal letter to Speaker O'Neill which you provided me and which I am returning to you with this memorandum, is to supplement, not to replace, 5 U.S.C. 7901 by providing non-"foreign affairs agencies" of the U.S. which have employees abroad with authorities approaching those of 22 U.S.C. 1156-58 for provision of medical services to those employees. Thus, these agencies, which cannot now utilize 22 U.S.C. 1156-58, would be authorized to provide more complete medical services by reliance upon 5 U.S.C. 7901 and the new 5 U.S.C. 7904. The "foreign affairs agencies" (including CIA) would continue to rely upon 5 U.S.C. 7901 and 22 U.S.C. 1156-59.

5. Accordingly, Section 421(a)(13) should continue to cite 5 U.S.C. 7901 but should also cite 22 U.S.C. 1156-59 and this amendment will be proposed.

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cc: OMS  
AI/DDA  
OGC/

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## 5 § 7701

Note 41

## EMPLOYEES

Ch. 77

Employees who are restored to duty by order of the Commission because the employing agency failed to follow the procedural requirements of former section 803 of this title were entitled to compensation for the period of such unjustified or unwarranted removals in accordance with former section 652 of this title. 1955, 34 Comp.Gen. 568.

A veteran who was restored, after an improper separation, to an excepted position in which he did not have a year of continuous service at the time of separation was not entitled to compensation for the period of separation. 1950, 30 Comp.Gen. 137.

### 42. — Leave

Plaintiff, a separated veteran, was entitled to pay under former section 803 of this title for the thirty-day notice period during which he was placed on an annual

leave or leave-without-pay status. *Armand v. U. S.*, 1957, 136 Ct.Cl. 339.

Where plaintiff, entitled to veteran's preference, sues for loss of salary arising from his dismissal as a Civil Service employee in the Public Health Service Hospital in Fort Worth, and where it is shown that in his discharge and on appeal all procedural requirements were substantially complied with, including 30 days notice he was not entitled to recover except for 30 days when he was placed on annual leave without pay. *Taylor v. U. S.*, 1955, 131 Ct.Cl. 387.

Where plaintiff was placed on annual leave for the period of the 30 days notice, and was deprived of his pay during that period he was entitled as of right to pay for the period of annual leave, and is entitled to recover the amount due. *Id.*

## CHAPTER 79—SERVICES TO EMPLOYEES

Sec.

7901. Health service programs.

7902. Safety programs.

7903. Protective clothing and equipment.

### § 7901. Health service programs

(a) The head of each agency of the Government of the United States may establish, within the limits of appropriations available, a health service program to promote and maintain the physical and mental fitness of employees under his jurisdiction.

(b) A health service program may be established by contract or otherwise, but only—

(1) after consultation with the Secretary of Health, Education, and Welfare and consideration of its recommendations; and

(2) in localities where there are a sufficient number of employees to warrant providing the service.

(c) A health service program is limited to—

(1) treatment of on-the-job illness and dental conditions requiring emergency attention;

(2) preemployment and other examinations;

(3) referral of employees to private physicians and dentists; and

(4) preventive programs relating to health.

(d) The Secretary of Health, Education, and Welfare, on request, shall review a health service program conducted under this section and shall submit comment and recommendations to the head of the agency concerned.

(e) When this section authorizes the use of the professional services of physicians, that authorization includes the use of the professional services of surgeons and osteopathic practitioners within the scope of their practice as defined by State law.

(f) The health programs conducted by the following agencies are not affected by this section—

- (1) the Tennessee Valley Authority;
- (2) the Canal Zone Government; and
- (3) the Panama Canal Company.

Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 530; Pub.L. 90-83, § 1(47), Sept. 11, 1967, 81 Stat. 209.

#### Historical and Revision Notes

##### Reviser's Notes

###### 1966 Act

Derivation: United States Code  
5 U.S.C. 150

Revised Statutes and Statutes at Large  
Aug. 8, 1946, ch. 835, 60 Stat. 903.  
Sept. 23, 1950, ch. 1010, § 8, 64 Stat. 936.

###### Explanatory Notes.

In subsection (a), the words "agency of the Government of the United States" are coextensive with and substituted for "departments and agencies, including Government-owned and controlled corporations" to avoid confusion with the definitions in sections 101-105.

In subsection (d) the word "appropriate" in the phrase "appropriate comment and recommendations" is omitted as unnecessary. The words "to the head of the agency concerned" are added for clarity.

In subsection (e), the substance of the definition of "physician" in former section 790 is substituted for the reference to that section.

In subsection (f) (2) and (3), the words "Canal Zone Government" and "Panama Canal Company" are substituted for "Panama Canal" and "Panama Railroad", respectively, on the authority of the Act of Sept. 26, 1950, ch. 1049, § 2(a), 64 Stat. 1038.

The last proviso of the first sentence of the Act of Aug. 8, 1946, is omitted as executed.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

###### 1967 Act

This section amends 5 U.S.C. 7901 to reflect 1966 Reorganization Plan No. 3, effective June 25, 1966, 80 Stat. 1610, section

1 of which transferred all functions of the Public Health Service to the Secretary of Health, Education, and Welfare.

#### Notes of Decisions

##### Library references

United States § 39(5).  
C.J.S. United States §§ 17, 46.

##### 1. Preemployment examinations

Preemployment examinations by medical officers of the Veterans Administra-

tion of appointees to positions in the Veterans Administration may be made without charge to the applicant when administratively determined to be within the purview of this section. 1951, 30 Comp.Gen. 493.

16 October 1978

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MEMORANDUM FOR:

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In reviewing the legislation package which the Inter-agency Committee on Overseas Allowances and Benefits is about to send to Congress, I noted one thing which will require a change in our charter legislation. Section 421(a)(13), in providing authority for a medical program, stated that we will "conduct health-service programs as authorized by Section 7901 of Title 5, United States Code." Actually, Title 5 is much too restrictive for our purposes since, among other things, it is limited to areas outside of the United States and its territories and possessions. The changes being proposed to Title 5 by the Interagency Committee don't go very far, because the Department of Defense is not willing to accept that type of responsibility for the thousands, even millions, of employees and dependents in the United States. If we are held to the Title 5 authorities in this Agency, we would be severely limited. Consequently, our legislation should incorporate the State Department's authority, which is Part E, Subchapter IX, Chapter 14, of Title 22.

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cc: OMS  
OGC

REFERENCE

STAT

16 October 1978

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In reviewing the legislation package which the Inter-agency Committee on Overseas Allowances and Benefits is about to send to Congress, I noted one thing which will require a change in our charter legislation. Section 421(a)(13), in providing authority for a medical program, stated that we will "conduct health-service programs as authorized by Section 7901 of Title 5, United States Code." Actually, Title 5 is much too restrictive for our purposes since, among other things, it is limited to areas outside of the United States and its territories and possessions. The changes being proposed to Title 5 by the Interagency Committee don't go very far, because the Department of Defense is not willing to accept that type of responsibility for the thousands, even millions, of employees and dependents in the United States. If we are held to the Title 5 authorities in this Agency, we would be severely limited. Consequently, our legislation should incorporate the State Department's authority, which is Part E, Subchapter IX, Chapter 14, of Title 22.

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